

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 17, 2005

The Honorable Arlen Specter
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Pat Roberts
Chairman
U.S. Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

The Honorable John D. Rockefeller IV
Ranking Member
U.S. Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Specter, Chairman Roberts, Ranking Member Leahy, and Ranking Member Rockefeller:

We write to express our deep concern about the draft Patriot Act reauthorization conference report made available to us early this afternoon. As you know, the Senate version of the bill, passed by unanimous consent in July, was itself a compromise that resulted from intense negotiations by Senators from all sides of the partisan and ideological divides. Unfortunately, the conference committee draft retreats significantly from the bipartisan consensus we reached in the Senate. It does not accomplish what we and many of our colleagues in the Senate believe is necessary – a reauthorization bill that continues to provide law enforcement with the tools to investigate possible terrorist activity while making reasonable changes to the original law to protect innocent people from unnecessary and intrusive government surveillance.

To support this bill, we would need to see significant movement back toward the Senate position in the following areas:

1. Section 215

- The draft conference report would allow the government to obtain sensitive personal information on a mere showing of relevance. This would allow government fishing expeditions. As business groups like the U.S. Chamber of Commerce have argued, the government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy.
- The draft conference report does not permit the recipient of a Section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. The recipient of a Section 215 order is entitled to meaningful judicial review of the gag order.

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2. National Security Letters

- The draft conference report does not provide meaningful judicial review of an NSL's gag order. It requires the court to accept as conclusive the government's assertion that a gag order should not be lifted, unless the court determines the government is acting in bad faith. The recipients of NSLs are entitled to meaningful judicial review of a gag order.
- The draft conference report makes it a crime, punishable by up to one year in prison, for individuals to disclose that they have received an NSL, even if they believe their rights have been violated. Violating an NSL gag order should only be a crime if the NSL recipient intends to obstruct justice.

3. Sunsets

- The draft conference report includes seven-year sunsets, which are too long. Congress should have the opportunity to again review the controversial provisions of the Patriot Act before the final year of the next presidential term. Four-year sunsets would ensure accountability and effective oversight.
- The draft conference report does not sunset the NSL authority. In light of recent revelations about possible abuses of NSLs, the NSL provision should sunset in no more than four years so that Congress will have an opportunity to review the use of this power.

4. Sneak and Peek Warrants

- The draft conference report requires the government to notify the target of a "sneak and peek" search no earlier than 30 days after the search, rather than within seven days, as the Senate bill provides and as pre-Patriot Act judicial decisions required. The conference report should include a presumption that notice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90-day extensions means that a shorter initial time frame should not be a hardship on the government.

For the past several years, our bipartisan coalition has been working together to highlight and fix the civil liberties problems posed by the Patriot Act. We introduced the SAFE Act to address those problems, while still maintaining important law enforcement powers needed to combat terrorism. We cannot support a conference report that would eliminate the modest protections for civil liberties that were agreed to unanimously in the Senate.

The conference report, in its current form, is unacceptable. We hope that you, as members of the conference committee, will consider making the changes set forth above. If further changes are not made, we will work to stop this bill from becoming law. Thank you for your consideration.

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Sincerely,



Larry E. Craig



Richard J. Durbin



John Sununu



Russell D. Feingold



Lisa Murkowski



Ken Salazar